

REMARKS

The Office Action dated May 22, 2009, has been received and carefully noted. The response filed on July 22, 2009, is a full and complete response thereto. The present submission merely responds to the further Advisory Action dated August 4, 2009.

With respect to the Advisory Action's argument beginning at page 3 of the continuation sheet, it is respectfully noted that Applicant has not argued limitations that are not presented in the claims. Instead, Applicant respectfully insists that the claims must be read in light of the specification. The Advisory Action did not respond to that argument, and the Office Action did not read the claims in light of the specification. Thus, the rejection is in error and must be withdrawn.

Likewise, with respect to the Advisory Action's argument beginning at page 4 of the continuation sheet, it is respectfully noted that Applicant has not argued limitations that are not presented in the claims. Instead, Applicant respectfully insists that the definition of "header section" provided in the specification must be acknowledged and used to interpret the claims. The Advisory Action did not respond to that argument, and the Office Action did not properly consider the definition of "header section" as provided in the specification. Thus, the rejection is in error and must be withdrawn.

The Advisory Action, at page 5, simply insisted that "the rejection, when reiterated in the response, clearly explains the mapping between the prior art and the claims." However, Applicant respectfully notes that simply reiterating one's statements does not meaningfully advance prosecution. Like the Office Action's statement that was

a conclusory assertion that the mapping in the claims is proper, this further conclusion does not explain why the Examiner was not persuaded by the distinctions set forth in the Response of July 22, 2009. If no answers to the distinctions identified in the Response of July 22, 2009, can be provided, then the claims should be allowed. If the distinctions can be answered, Applicant has a right to be told what those answers are so that appropriate modification of the claims or clarification of the record can be made, and the invention for which a patent is sought can be expediently allowed to issue.

At page 6, the Advisory Action used essentially the same argument as at page 4 of the Advisory Action. However, contrary to the Advisory Action's contentions, Applicant is not asking for limitations to be read into the claims from the specification, but instead Applicant is insisting that U.S. law requires that the claims be read in light of the specification. In light of the specification, the implicit construction of the claims provided in the Office Action is incorrect and the rejection must be withdrawn.

At pages 7-8, the Advisory Action again used essentially the same argument as at pages 4 and 6. Contrary to the Advisory Action's contentions, however, Applicant did not request limitations from the specification to be added to the claims. Instead, Applicant pointed out (1) that there is no motivation to modify Lawande so as to arrive at the claims and (2) that advantages exist that demonstrate the non-obvious nature of Applicant's invention. The Advisory fails to answer either of these arguments. If no answers can be given, the right thing is for the claims to be allowed and the application to be passed to issuance.

At pages 8-9, the Advisory Action first simply cuts and pastes a portion of the original rejection and then adds that “The claimed physical layer corresponds to the IEEE 1394 physical layer of Lawande” Thus, it appears that the Advisory Action is no longer continuing the argument in the Office Action regarding “An alternate interpretation” As such, no further response is necessary, since the original rejection has already been addressed.

At page 14, the Advisory Action essentially cuts and pastes a portion of the rejection found at page 4 of the Office Action (and reproduced at pages 15-16 of the Office Action). This is followed, at page 15 of the Advisory Action, by a paragraph that essentially cuts and pastes the second paragraph found at page 16 of the Office Action. Those arguments were already fully addressed in the Response filed July 22, 2009, and the reproduction of those arguments, without responding the distinctions already identified in the Response filed July 22, 2009, does not meaningfully advance prosecution. If no responses to Applicant’s arguments can be provided, the appropriate course of action is to withdraw the rejection and allow the claims of the application.

Additionally, at pages 15-16, the Advisory Action quotes material from the MPEP on the rationales that are allegedly permitted by the *KSR* decision. None of those rationales, however, is specifically identified as being used in the rejection. Accordingly, this material appears to be extraneous.

Next, at page 16, the Advisory Action reasserts that the feature of “a fifth header field for an offset value for determination of data payload start in said data package”

reads on the alleged prior art. For the reasons already provided in the Response of July 22, 2009, this assertion is not correct.

In the next paragraph of page 16, the Advisory Action took the position that although Applicant had pointed out that Connery's offset field is in the TCP header, "the claimed limitation of the fifth header field is located in the network/transport layer which corresponds to the TCP layer." This argument is essentially irrelevant to Applicant's argument. Applicant had argued that it would not be obvious to modify the ip_fragment_offset of Lawande to be like the offset field of Connery, because Connery already has a corresponding "fragment offset" in the IP header, which is a different header than the TCP header. Thus, the proposed modification to Lawande is not obvious.

Finally, the Advisory, at page 17, argued that "the use of a data offset field is used to identify the start of the payload, as is often used in parsing of communications data." This alleged motivation to modify Lawande does not seem to provide a rationale for including such a field in the same header as the other fields in Lawande. In fact, it does not provide any motivation specifically to modify Lawande at all. The Advisory Action (like the Office Action) has not recognized that there is no need for a data offset field in Lawande, and that consequently one of ordinary skill in the art would view such a modification to Lawande to be unnecessary and consequently undesirable. Thus, the cited art does not render the claimed invention obvious.

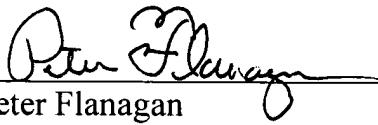
For the reasons set forth above, it is respectfully submitted that each of claims 1 and 24-61 recites subject matter that is neither disclosed nor suggested in the cited art. It

is, therefore, respectfully requested that all of claims 1 and 24-61 be allowed, and that this application be passed to issuance.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant's undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


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Enclosures: Request for Continued Examination (RCE) transmittal
Petition for Extension of Time
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